

**BAKER & HOSTETLER LLP**

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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-04611 (SMB)

Plaintiff,

v.

SCOTT NEWBERGER,

Defendant.

**AFFIDAVIT FOR JUDGMENT BY DEFAULT**

Farrell A. Hochmuth, being duly sworn, deposes and states:

1. I was admitted pro hac vice into this Court and am a partner with the firm of Baker & Hostetler LLP, attorneys for Irving H. Picard (“Trustee”), Trustee for the consolidated Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Estate of Bernard L. Madoff, and I am familiar with all the facts and circumstances in this action.
2. I make this affidavit pursuant to Rule 7055-2(a) of the Local Rules of the Bankruptcy Court for the Southern District of New York, in support of the Trustee’s application for entry of a default judgment against Defendant Scott Newberger (“Defendant”).
3. This action is an adversary proceeding commenced before the same Court before which the main underlying SIPA proceeding, No. 08-01789 (SMB) (the “SIPA Proceeding”), is pending. The SIPA Proceeding was originally brought in the United States District Court for the Southern District of New York as *Securities and Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791, and has been referred to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and 15 U.S.C. §§ 78eee(b)(2)(A), (b)(4). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).
4. On February 3, 2011, the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon Defendant. *See* Dkt. Nos. 3 and 4. An Affidavit of Service evidencing proper and timely service was filed with the Court. Dkt. No. 4. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit 1.

5. The Defendant has not answered the Complaint, and the time for Defendant to answer the Complaint has expired. A true and correct copy of the Certificate of Default obtained pursuant to Local Bankruptcy Rule 7055-1 is attached hereto as Exhibit 2. *See also* Dkt. No. 7.

6. The Complaint in this adversary proceeding asserted claims pursuant to sections 78fff(b), 78FFF-1(a) and 78fff-2(c)(3) of the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of \$845,147.00 in connection with certain transfers of property by BLMIS to or for the benefit of Defendant.

7. On September 15, 2016, the Trustee voluntarily dismissed Counts Two through Six of the Complaint against Defendant with prejudice. The dismissal had no effect on or application to the Trustee's claims against Defendant in Count One of the Complaint. Dkt. No. 9.

8. This action seeks judgment for the liquidated amount of \$845,147.00 pursuant to Count One of the Complaint, which is justly due and owing, and no part of which has been paid.

9. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit of Service reflecting proper service of the Clerk's Entry of Default on Defendant on November 15, 2016. *See also* Dkt No. 11.

10. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: Houston, Texas January 5, 2017

Sworn to before me this  
5th day of January, 2017

Mandy Van Horn  
Notary Public, State of Texas



## **EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT  
Southern District of New York

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SECURITIES INVESTOR PROTECTION  
CORPORATION,

Adv. Pro. No. 08-01789 (BRL)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.  
BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

-----  
In re:

BERNARD L. MADOFF,

Case No. 09-11893 (BRL)

Debtor.

-----  
IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-04611 (BRL)

Plaintiff,

v.

SCOTT NEWBERGER,

Defendant.

-----  
AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
                         ) ss:  
COUNTY OF NEW YORK )

I, Yan Fayerman declare:

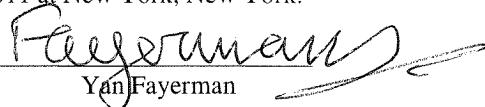
1. I am over the age of 18 years and not a party to these chapter 11 cases.
2. I am employed by Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, NY 10016.
3. On the 4<sup>th</sup> day of February, 2011, I caused a true and accurate copy of the:
  - (i) "Complaint", along with the relevant exhibits (Docket No. 1); and the
  - (ii) "Notice of Applicability of the Order Approving Case Management Procedures for Avoidance Actions" (Docket No. 2); and the

- (iii) "Summons and Notice of Pretrial Conference in An Adversary Proceeding" (Docket No. 3); and the
- (iv) "Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order" dated November 11, 2010; and the
- (v) "Avoidance Action Executive Summary Letter dated December 20, 2010"; and the
- (vi) "Second Amended Notice of Omnibus Avoidance Action Hearing Dates",

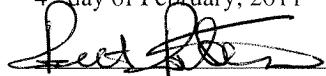
to be served upon the parties listed on Exhibit 1, attached hereto, via First Class US Mail.

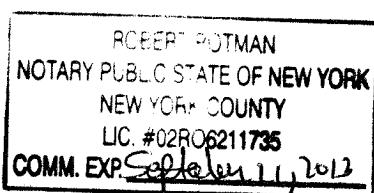
4. Said documents were securely enclosed in postage prepaid envelopes and delivered to an office of the United States Postal Service for delivery by First Class Mail.

5. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge. Executed this 4<sup>th</sup> day of February, 2011 at New York, New York.

By   
Yan Fayerman

Sworn before me this  
4<sup>th</sup> day of February, 2011

  
Notary Public



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SCOTT NEWBERGER

SCOTT NEWBERGER  
CHICAGO IL 60657

000614 004072

## **EXHIBIT 2**

# United States Bankruptcy Court

Southern District of New York

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**In re:**

Bernard L. Madoff Investment Securities LLC

Case No: 08-01789 (BRL)

SIPA Liquidation

**Debtor**

-----X

Irving H. Picard, as Litigation Trustee of Bernard  
L. Madoff Investment Securities LLC

Adversary Proceeding  
No: 10-4611 (BRL)

**Plaintiff**

v.

Scott Newberger

**Defendant**

-----X

## ENTRY OF DEFAULT

It appears from the record that the following defendant failed to plead or otherwise defend in this case as required by law.

SCOTT NEWBERGER

Therefore, default is entered against the defendant as authorized by Bankruptcy Rule 7055.

April 25, 2012  
Date

Vito Genna  
Clerk of the Bankruptcy Court  
By: /s/ Tenille Brown  
Deputy Clerk

## **EXHIBIT 3**

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, NY 10111  
Telephone: (212) 589-4200  
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David J. Sheehan  
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CORPORATION,

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BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC,

Defendant.

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

SCOTT NEWBERGER,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04611 (SMB)

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
                          )  
                          ) ss.:  
COUNTY OF NEW YORK )

I, **Dawn Larkin-Wallace**, being duly sworn, depose and say: I am more than eighteen years old and not a party to this action. My business address is Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111.

On November 15, 2016 I served the *Clerk's Entry of Default* by emailing the interested parties true and correct copies via electronic transmission to the email addresses designated for delivery and/or by placing true and correct copies thereof in sealed packages designated for regular U.S. Mail to those parties as set forth on the attached Schedule A.

/s/ Dawn Larkin-Wallace  
Dawn Larkin-Wallace

Sworn to before me this  
15th day of November, 2016

/s/ Sonya M. Graham  
Notary Public  
Sonya M. Graham  
Notary Public, State of New York  
No. 01GR6133214  
Qualified in Westchester County  
Commission Expires: Sept.12, 2017

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**SCHEDULE A**

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**Pro Se Defendants**

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Scott Newberger  
CHICAGO, IL 60657